(1)

Supreme Court, U.S.
FILED

No. 97 1261 FEB 0 2 1998

IN THE

Supreme Court of the United States

October Term, 1997

JOHN W. NORTHEN,

Petitioner,

v.

CITY OF CHICAGO, LEROY MARTIN, MATT L. RODRIGUEZ, RAYMOND RISLEY, JERRY ROBINSON, LOUIS VELEZ, STEPHEN JACKSON, MICHAEL PEASE, and ROBERT HURST,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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36 pp

QUESTIONS PRESENTED FOR REVIEW

1. Did the United States Court of Appeals for the Seventh Circuit err in finding Petitioner's Section 1983 claims premised on his removal from the active-duty roster and payroll of the Chicago Police Department time barred, even though this act occurred within the limitations period applicable to Petitioner's First Amendment retaliation claims?

2. Did the United States Court of Appeals for the Seventh Circuit err in affirming the dismissal of Petitioner's Section 1983 claims premised upon Respondents' denial of his rights under the Due Process Clause when he was removed from the CPD active duty roster and payroll and was *never* afforded either a pre or post termination hearing?

3. Did the United States Court of Appeals for the Seventh Circuit err in refusing to apply the standard of review set forth in this Court's decision in *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit,* 507 U.S. 163 (1993), in determining that the allegations in Petitioner's complaint did not adequately plead a Section 1983 *Monell* claim against Respondents, City of Chicago, Martin, Rodriguez, and Risley?

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioner John W. Northen respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this cause.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit (Appendix "App." A., *infra*) is reported at 126 F.3d 1024 (7th Cir. October 8, 1997). The order of the trial court (App. B, *infra*) is unreported.

JURISDICTION

The judgment of the United States Court of Appeals for the Seventh Circuit was entered on October 8, 1997. That court's order denying Petitioner's petition for rehearing and suggestion for rehearing *en banc* was denied on November 4, 1997. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(l).

The jurisdiction of the district court was invoked under 28 U.S.C. § 1331 and the doctrine of pendent jurisdiction. The jurisdiction of the court of appeals was invoked under 28 U.S.C. § 1291.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, amend. I

United States Constitution, amend. XIV

42 U.S.C. § 1983

The Constitutional and statutory provisions involved are reprinted at Appendix C, *infra*.

STATEMENT OF THE CASE

Petitioner John Northen attempted to blow the whistle on fraud and corruption in the highest echelons of the Chicago Police Department ("CPD"). To date, his efforts have been neutralized by an ongoing cover-up which has destroyed his exemplary career and livelihood and forced him into early retirement.

In response to a politically rigged promotion process known as "ExamScam", Petitioner organized a multi-racial group of over six hundred of his fellow CPD sergeants and drafted certified letters on their behalf to the then federal prosecutor in Chicago and the Mayor of Chicago. The texts of these two letters have been included in the Appendix (App. D, *infra*) to provide this Court with a concise yet comprehensive overview of "ExamScam".

Petitioner's outspoken criticism of "ExamScam" resulted in a relentless series of adverse and pretextual retaliatory personnel actions taken against him by respondents, individually and acting in concert with themselves and others. The conspiracy was directed by the then top police official in the CPD, former Superintendent LeRoy Martin, one of the Respondents in this cause.

The relentless retaliatory actions by Respondents and others caused Petitioner to become clinically depressed. Petitioner was removed from the CPD active duty roster and payroll on November 18, 1991, as a result of his depression. Petitioner was *never* afforded any hearing by Respondents either before or after his removal from active duty regarding: (a) the causes of his depression; and (b) whether Petitioner could be returned to active duty if Respondents ceased their retaliatory activities against Petitioner and adequately investigated Petitioner's allegations relating to "ExamScam."

Petitioner filed this action alleging violations of 42 U.S.C. §1983 on November 17, 1993. The amended complaint at issue charged the individual Respondents with violations of Petitioner's rights under the First, Fourth and Fourteenth Amendments to the Constitution, and included pendent state claims. Petitioner also asserted two *Monell* policy claims against, among others, Respondent City of Chicago.

It is undisputed that Petitioner had a protected property interest under Illinois law in his continued employment as a CPD Sergeant. It was also conceded by Respondents in the Seventh Circuit that Petitioner's speech involved matters of public concern. A more detailed exposition of the allegations in Petitioner's amended complaint now follows.

Petitioner John W. Northen was appointed a sworn member of the Chicago Police Department ("CPD") on December 19, 1966. Petitioner advanced to the rank of sergeant in the CPD by 1985 and, along with 851 other CPD sergeants, took the 1987 CPD lieutenants promotional examination. The 1987 lieutenants promotional examination resulted in an eligibility list which was posted by respondent City of Chicago on March 14, 1988. Along with numerous other CPD sergeants, petitioner alleged that the examination process that resulted in this list was a "sham". Specifically, petitioner alleged that the 1987 CPD lieutenants promotional exam was rigged so that 80 percent of a candidate's total score was dependent upon how well the candidate performed during an oral examination or "oral

board", which was rigged. By relying so heavily on the subjective component of the overall examination *i.e.*, the oral board, petitioner alleged that those with "clout" within the CPD had an unfair advantage over those candidates without it. To make matters worse, the "oral board" raters (or examiners) gave substantial credit during the oral examination to a purportedly "correct" answer, *e.g.*, "notify the watch commander" — an answer which is not documented anywhere in the CPD's general orders. Certain candidates with "clout" were tipped in advance that they could increase their scores by giving this answer during their oral boards.

Immediately upon the posting of the 1988 eligibility list, petitioner and more than 600 other Chicago police sergeants *i.e.*, candidates, who took the 1987 examine challenged the exam in state court litigation. The litigation was directed by a committee called the 9171 Committee.

Petitioner served as the 9171 Committee's principal organizer, raised money to pay the group's attorney's fees, published and circulated several thousand copies of newsletters critical of what plaintiff and the Committee termed "ExamScam", circulated thousands of bumper stickers criticizing "ExamScam," and wrote letters to the Mayor of Chicago, and the U.S. Attorney for the Northern District of Illinois. Additionally Petitioner also appeared in a number of media reports regarding "ExamScam."

Subsequent to the filing of the lawsuit by the 9171 Committee, Respondents entered into a conspiracy, the purpose of which was to retaliate against Petitioner because of his efforts to bring to light the fraud and chicanery involved in the 1987-88 CPD lieutenants promotional examination and process. Petitioner also attempted to expose the coverup of "ExamScam" by the City's Administration.

In addition to his efforts to shed light on "ExamScam," Petitioner also criticized the CPD's policy of "rotating shifts" from late 1989 to early 1993. Petitioner even drafted a resolution which was passed by the Chicago City Council in Decem-

ber 1989 urging the CPD to abandon rotating shifts in favor of fixed shifts.

Respondents then subsequently engaged in a number of acts of retaliation which included numerous baseless reprimands and suspensions of Petitioner for purported infractions of CPD rules and regulations, threats of disciplinary action which never materialized, a precipitous decline in Petitioner's rating grades, repeated denials in job related benefits such as transfers to more desirable assignments, the denial of career enhancing skills through CPD-sponsored educational opportunities, and other disparate treatment, including the denial of benefits routinely accorded to similarly situated CPD sergeants assigned to district patrol.

As a direct result of these retaliatory acts, Petitioner became depressed. On October 18, 1991, Petitioner executed an affidavit at the request of the CPD's Retirement Board stating that he had been clinically diagnosed with depression which Petitioner indicated "resulted from adverse actions taken against me by the City of Chicago in retaliation for my truthful and critical statements on police matters of public interest which constituted violations of ordinances and regulations of the CPD."

Thirty days later, on November 18, 1991, Petitioner was involuntarily removed from CPD's active duty roster list and payroll and placed on the medical disability roll. Petitioner's placement on the CPD's medical disability roll on November 18, 1991 resulted in a 50 percent reduction in his pay. Although vested with authority to conduct a hearing regarding Petitioner's placement on the medical disability roll, none of the Respondents, including Respondent Martin — who had actual authority to conduct the hearing — ever afforded Petitioner with such a hearing at any time before or after his involuntary placement on the disability roll. Again, it is uncontested that at no time before, during or after November 18, 1991 was Petitioner ever provided with a pre- or post-termination hearing with respect to whether or not he could continue his job as a CPD sergeant

or any hearing which would have provided Petitioner with the opportunity to have Respondents' unlawful acts brought to light.

In addition to his Section 1983 claims against the individual Respondents, Petitioner further alleged in his complaint that Respondent City of Chicago had a custom and policy to deny members of the CPD who engage in protected First Amendment activities — such as whistleblowing as to fraud and chicanery associated with police promotional examinations — with any type of hearing following their involuntary placement on disability leave. Petitioner further alleged that Respondent City of Chicago had a custom and policy to harass or retaliate against whistleblowers like Petitioner who engage in protected First Amendment activities critical of the CPD and to cause such persons to be either outright fired or constructively discharged from the CPD, as was the case with Petitioner.

Petitioner further alleged in his complaint that he was falsely arrested without probable cause in November, 1993, and charged with a bogus criminal offense — a charge which was eventually dropped. The specifics relating to this allegation were that in October and November of 1993, while Petitioner was still on the medical disability roll, Petitioner sought to lawfully purchase a firearm. Following the mandatory waiting period, when Petitioner went to purchase his gun, he was jumped and arrested by five Chicago police officers — who happened to be out of their jurisdiction given that the gun shop was located in suburban Chicago — and also was detained at a suburban Chicago police station for approximately five hours. Petitioner was ultimately charged with "falsely impersonating a government official", in violation of 720 ILCS 5/32-5, based upon a false complaint filed by Respondent Velez. These charges were dismissed prior to trial by the Du Page County, Illinois State's Attorney's Office.

The district court dismissed Petitioner's complaint in its entirety, pursuant to Respondents' motion to dismiss brought under Fed. R. Civ. P. 12(b)(6).

The United States Court of Appeals for the Seventh Circuit reversed the trial court's decision, in part, and remanded. The Seventh Circuit ordered that Petitioner could proceed with his Section 1983 claim based on his arrest at the suburban Chicago gun shop and his subsequent detention at the police station. The Seventh Circuit held that, based on the allegations in Petitioner's complaint, the gun shop incident could be found to be a violation of Petitioner's rights under the First and Fourth Amendments.

However, the Seventh Circuit affirmed the trial court's dismissal of Petitioner's Section 1983 claims premised on Respondent's violation of Petitioner's due process rights, and affirmed the dismissal of Petitioner's *Monell* claims as well. Also, the Seventh Circuit found most of Respondents' retaliatory acts time-barred by the applicable statute of limitations. Further, the Seventh Circuit held that, even though it fell within the applicable statute of limitations, Petitioner's removal from the active duty roster and placement on the disability roll — which resulted in a 50 percent reduction in Petitioner's pay — was also time-barred because it was merely a "consequence" of Respondents' prior unlawful acts.

REASONS FOR GRANTING THE WRIT

The Court should grant the writ because the Seventh Circuit's opinion holding that Petitioner's Section 1983 claim premised on his removal from the CPD's active duty roster and payroll were time barred is in conflict with this Court's decision in *Delaware State College v. Ricks*, 449 U.S. 250 (1980). Petitioner's removal from the CPD was not merely a "consequence" of prior unlawful acts but was an "act" which violated his constitutional rights. Also, the Seventh Circuit's decision affirming the dismissal of Petitioner's Section 1983 claims premised on a denial of due process is in conflict with this Court's decision in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Under the three-part test of *Mathews*, Petitioner clearly was denied due process. Finally, the Seventh Circuit's decision affirming the dismissal of Petitioner's *Monell* claims is in conflict

with this Court's decision in *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163 (1993). Petitioner's complaint adequately alleged such claims under the standards of Fed. R. Civ. P. 8.

ARGUMENT

A. Petitioner's First Amendment Retaliation Claims Against All Respondents Were Timely Filed

As stated above, the Seventh Circuit concluded in its opinion that Petitioner's First Amendment retaliation claim based on his removal from the CPD's active duty roster was time barred because it was merely a consequence of Respondents' prior retaliatory acts. This conclusion is in direct conflict with this Court's decision in *Delaware State College v. Ricks*, 449 U.S. 250 (1980). In *Ricks*, this Court examined the issue of determining when the statute of limitations begins to run on an employment discrimination claim brought under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* The Court in *Ricks* held that assessing timeliness "requires us to identify precisely the 'unlawful employment practice' of which [petitioner] complains." *Ricks*, 449 U.S. at 257. In *Ricks*, the Court treated the allegedly discriminatory denial of tenure — rather than the resulting non-discriminatory termination of employment one year later — as the act which triggered the commencement of the limitations period.

The Seventh Circuit's decision holding that Petitioner's removal from the active duty roster was merely a "consequence" of prior unlawful acts is wrong. The Seventh Circuit misreads *Ricks* and has unnecessarily extended its possible scope and coverage. This Court in *Ricks* held that the applicable limitations period began to run when *Ricks* was denied tenure, rather than on the date his employment terminated. *Ricks* action was, therefore, time-barred. *See also Chardon v. Fernandez*, 454 U.S. 6, 8 (1981) (*per curium*). Indeed, the Court in *Chardon* noted that "[t]here were no other allegations, either in *Ricks* or in these cases, of illegal acts subsequent to the date on which

the decisions to terminate were made. As we noted in *Ricks*, '[m]ere continuity of employment, without more, is insufficient to prolong the life of a cause of action for employment discrimination.' *Id.*, at 257."

However, this is not a case in which a plaintiff receives advance notice that an adverse employment action is going to be taken against him but argues that the statute of limitations does not begin to run until the action has actually occurred. In other words, the statute of limitations with respect to Petitioner's Section 1983 claim cannot be deemed to have commenced prior to November 18, 1991. On this record Northen received no advance notice that he would be placed, — permanently as it turned out — on disability leave. As Petitioner alleged in his complaint, his removal from active duty and placement on the disability roll was Respondents' ultimate objective in silencing Petitioner's criticism of "ExamScam."

Also, unlike the situation in *Ricks* and *Chardon*, the Respondents took additional acts against Petitioner subsequent to his placement on the disability roll which substantially worsened his condition, including arresting and detaining Petitioner without probable cause at the suburban Chicago gun shop. Therefore, unlike *Ricks* and *Chardon*, this is not a case where the only actionable event occurred outside the two year limitations period.

As Petitioner argued in the Seventh Circuit, his situation is similar to that present in *Scherer v. Balkema*, 840 F.2d 437 (7th Cir.), *cert. denied*, 486 U.S. 1043 (1988). The Seventh Circuit in *Scherer* held that a Section 1983 conspiracy defendant can be held liable for overt acts committed in furtherance of a conspiracy which occur within the limitations period. Placing Petitioner on the medical disability roll on November 18, 1991 was certainly an overt act in furtherance of the Section 1983 conspiracy which Petitioner alleged was ongoing between and among the various Respondents. In fact, in the absence of this act, the unlawful objective of the Section 1983 conspiracy could not have been accomplished. Further, since one of the unlawful acts of Respondents occured within the limitations period, *i.e.*,

his arrest at the gun shop and subsequent detention at the police station, it makes no sense whatsoever to forbid Petitioner from proceeding on a First Amendment retaliation claim based on his removal from active duty, which also occurred within the limitations period.

Finally, there is strong policy reason for this Court to determine that the statute of limitations does not bar Petitioner's Section 1983 claims premised on his removal from active duty. By taking a variety of retaliatory actions against Petitioner over a lengthy period of time — but without actually depriving him of any liberty or property interest — Respondents accomplished their ultimate objective of causing great mental harm to Petitioner, and forcing his removal from active duty and, ultimately, from the CPD entirely. Petitioner did not know that he would become depressed and unable to work when the first retaliatory act was taken against him. In other words, the "Chinese water torture" method which the Respondents engaged in with respect to Petitioner was specifically designed to avoid a blatant discriminatory action against him, which would have obviously triggered the statute of limitations.

Petitioner alleged that his — involuntary — placement on the medical disability roll by Respondents was an act in furtherance of Respondents' conspiracy to retaliate against him for engaging in protected First Amendment activities. This act clearly could be found by a trier of fact to have constituted a constructive discharge of Petitioner, which resulted in a 50 percent reduction in his pay. In fact, Petitioner's disability benefits have now completely expired, *see* 40 ILCS 5/5-155 (1996), and Petitioner has been forced to collect his retirement pension.

These acts of Respondents, *i.e.*, Petitioner's placement on the disability roll, the failure to grant him a termination hearing, and the expiration of Petitioner's disability benefits, all occurred within the applicable limitations period. The Seventh Circuit's conclusion that Petitioner's Section 1983 claim against Respondents based on his removal from the active duty roster is time barred is wrong and should be reversed.

B. Petitioner Was Denied His Due Process Rights Because He Was Given No Opportunity For A Hearing Before An Impartial Tribunal Which Could Have Prevented Defendants From Retaliating Against Him Before He Was Constructively Discharged Or Which Could Have Restored Him To His Full Salary As An Active Duty CPD Sergeant Following A Determination That His Medical Disability Was Caused By Defendants' Violations Of Northen's Constitutional Rights

The Seventh Circuit's decision simply permits Respondents to engage in a policy of retaliating against CPD Sergeants who engage in whistleblowing activities, like Petitioner herein, with impunity. Petitioner suffered clinical depression as a result of Respondents' retaliatory actions. Petitioner was involuntarily placed on the medical disability roll because he admitted he was suffering from depression — a condition he claimed was caused by Respondents' unlawful actions. He was afforded no hearing before any impartial tribunal prior to his placement on the disability roll which could have stopped Respondents' retaliation or, following his placement on the disability roll, which could have restored him to his pre-disability salary and employment level — even though his condition was caused by a violation of his constitutional rights.

In its decision, the Seventh Circuit questions what purpose a post-termination hearing could have served in this case. The answer is obvious: it could have saved Petitioner's job and health.

Mathews is controlling; the Seventh Circuit's decision affirming the dismissal of Petitioner's Due Process claims —which were clearly timely filed — must be reversed. If this Court is going to allow Respondents to drive a whistleblowing plaintiff like Petitioner into a state of depression through a series of retaliatory acts and forbid Petitioner a remedy under the federal civil rights laws because a "termination hearing" could only have confirmed Petitioner's medical condition (which itself resulted from Respondents' retaliation), then the Court is permit-

ting Respondents "to produce a result which [they] could not command directly," *i.e.*, firing Petitioner for his protected speech. *See Speiser v. Randall*, 357 U.S. 513, 526 (1950); *see also Perry v. Sindermann*, 408 U.S. 593, 597 (1972).

The Seventh Circuit's decision is entirely at odds with *Mathews v. Eldridge*, 424 U.S. 319 (1976). The Court in *Mathews* set forth the factors which determines whether due process has been met in any particular case: "First, the private interest that will be affected by the official action; second, the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail." *Mathews*, 424 U.S. at 355 (citation omitted).

In this case, Petitioner clearly had a substantial financial interest, in his continued employment as a CPD sergeant at full salary. The first factor certainly favors that Petitioner be afforded a fair hearing before an impartial tribunal regarding his removal from active duty.

Regarding the second *Mathews* factor, it should be obvious that, without any procedure afforded Petitioner to prevent Respondents' retaliation, his placement on the medical disability roll, without any post-placement hearing, permitted Respondents to retaliate against Petitioner at their pleasure.

Finally, regarding the Government's interest, establishing a procedure which could review cases like Petitioner's and prevent violations of constitutional rights would be neither fiscally nor administratively burdensome. Under the *Mathews* factors, Petitioner was denied due process when he was removed from active duty and placed on the disability roll — and not afforded any hearing on the matter.

Again, Petitioner was never afforded *any* hearing by Respondents to determine: (a) what the cause of his depression

was; and (b) whether or not the cause, *i.e.* Respondents alleged retaliatory acts, could be curbed or eliminated. The reasons why Petitioner was not afforded any type of hearing are obvious; Respondents did not want their conduct to see the light of day — which a hearing obviously would have done. This Court has repeatedly noted the important interest which due process plays in our society. The right to procedural due process is "absolute," and "the law recognizes the importance to organized society that those rights be scrupulously observed." *Carey v. Piphus*, 435 U.S. 247, 266-67 (1978). Thus, the "absolute right" to adequate procedures stands independent from the ultimate outcome of a hearing. *See Carey*, 435 U.S. at 266-67.

The Seventh Circuit was unusually blunt in its dismissal of Petitioner's Section 1983 claims based on the denial of his due process rights: "as for the failure to grant Northen a termination hearing, we cannot imagine what purpose such a hearing would have served." Petitioner has answered that question immediately above. Also, the Seventh Circuit's decision is contrary to one of its earlier decisions, *Parrett v. City of Connersville*, 737 F.2d 690 (7th Cir. 1984), *cert. dismissed*, 469 U.S. 1145 (1985).

Plaintiff in *Parrett* was the former chief of detectives of a small town who had enraged his superiors because he had aggressively investigated the daughter of prominent local citizen for allegedly forging checks. Parrett was subsequently transferred to line captain in the uniform force without reduction in pay. As a line captain, Parrett could not be fired from the police force without cause, under Indiana law. Parrett was given no work to do as line captain and assigned to a windowless room to sit in that had formerly been a storage closet. His room had a desk and chair but no telephone. Parrett's enforced idleness caused him to suffer a nervous breakdown; he was hospitalized on April 3, 1980 and took medical retirement from the police force on June 1, 1980. In *Parrett,* the Seventh Circuit concluded that the foregoing treatment of Parrett amounted to his constructive discharge from the police force. The Seventh Cir-

cuit, however, noted that that did not end the matter: "the only question would be then whether [Parrett] was given due process of law." 737 F.2d at 694.

Because Parrett — unlike Petitioner herein — was a union member, under the applicable collective bargaining agreement, he could file a grievance regarding his treatment by his superiors before an arbitrator. The arbitrator, however, ruled that he would not consider any evidence relating to events after Parrett's transfer to line captain, including the refusal to assign Parrett any police duties. Parrett also took medical retirement before the arbitrator decided whether Parrett's transfer violated the collective bargaining agreement. In affirming the jury's verdict that Parrett was denied due process of law, the Seventh Circuit stated:

> The problem here is not that union grievance machinery is not a state remedy, for as the product of a collective bargaining agreement with the city it is, or that it is inherently inadequate, for it is not, but that as administered in the present case it could not protect the plaintiff's property right in his job as a police officer. This is not to say that arbitration cannot satisfy the requirements of due process unless the arbitrator is empowered to award full common law damages. But if he cannot, then he must be able to prevent the harm to the grievant before it occurs, which requires faster action then was taken by the arbitrator in this case.

Parrett, 737 F.2d at 697.

Petitioner's situation is even more egregious then Parrett's. As a CPD sergeant, he was not a member of any union or covered by any collective bargaining agreement; thus, there was no union grievance procedure he could utilize to prevent Respondents' retaliation against him. Also, if, as the Seventh Circuit's decision suggests, the hearing relating to Petitioner's disability could consider only the question of whether Petitioner was fit for duty, then what impartial tribunal was made available

by Respondents to afford Petitioner the opportunity to protect himself from Respondents' retaliatory actions or to determine that Petitioner's disability was caused by the retaliatory acts of his superiors and that, therefore, Petitioner should not have suffered a 50 percent pay cut as a result of his depression? The answer is obvious: none.

How can the undisputed and uncontroverted fact that no process or tribunal was available to protect Petitioner from the retaliatory acts of Respondents support the Seventh Circuit's conclusion that Petitioner suffered no denial of due process when his pay was cut in half as a result of his placement on the disability roll. The answer, again, is obvious: it cannot.

Petitioner never received *any* hearing in this case; there is no procedure afforded CPD sergeants by which unconstitutional acts of retaliation can be heard and remedied; there is no procedure afforded CPD sergeants to receive full pay for medical conditions which are caused by the unconstitutional acts of their superiors. In summary, there is no due process for CPD sergeants who decide to blow the whistle on corruption within the force. This violates the Constitution and is actionable under 42 U.S.C. § 1983.

C. Petitioner's *Monell* Claims Against Respondents City, Martin, Rodriguez, and Risley Should Not Have Been Dismissed

Even though the Seventh Circuit reversed the district court's decision dismissing Petitioner's First Amendment retaliation claim against Respondents, the Seventh Circuit affirmed the dismissal of Petitioner's First Amendment *Monell* claims against Respondents City, Martin, Rodriguez, and Risley. Petitioner alleged in his complaint that the activities of the Respondents at the gun shop occurred pursuant to a policy of Respondent City to retaliate against whistleblowers like Petitioner. Respondents Martin, Rodriguez, and Risley were alleged to have been policy makers. That is all that Petitioner is required to plead under Fed.R.Civ. P. 8 to state a *Monell* claim

against the City. *See Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163 (1993); *see also Lanigan v. Village of Hazel Crest*, 110 F.3d 467, 580 (7th Cir. 1997). The Seventh Circuit's decision affirming the dismissal of Petitioner's First Amendment *Monell* claims should be reversed.

Also, the Seventh Circuit's decision affirming the dismissal of Petitioner's *Monell* claims against Respondent City regarding his denial of Due Process should also be reversed for the reasons set forth immediately above.

CONCLUSION

The Seventh Circuit's decision affirming the dismissal of Petitioner's First Amendment retaliation claims against Respondents on statute of limitations grounds should be reversed. Also, the Seventh Circuit's decision affirming the dismissal of Petitioner's Due Process claims against Respondents City, Martin, Rodriguez and Risley should be reversed. Finally, the Seventh Circuit's decision affirming the dismissal of Petitioner's *Monell* claims against Respondents City, Martin, Rodriguez, and Risley should be reversed.

WHEREFORE, Petitioner John W. Northen respectfully requests that this Honorable Court grant his petition for a writ of certiorari to the United States Court of Appeals for the Seventh District in this cause.

Respectfully submitted,

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Dated: January 30, 1998

APPENDIX - A

John W. **NORTHEN,** Plaintiff-Appellant,

v.

CITY OF CHICAGO, et al., Defendants-Appellees.

No. 97-1245.

United States Court of Appeals,
Seventh Circuit.

Argued Sept. 10, 1997.

Decided Oct. 8, 1997.

Petition for Rehearing and Suggestion for Rehearing En Banc Denied Nov. 4, 1997.

Before POSNER, Chief Judge, and MANION and EVANS, Circuit Judges.

POSNER, Chief Judge.

This case follows a common modern pattern. A public employee has a dispute with his employer, and loses his job or suffers some other adverse personnel action. He brings a blunderbuss civil rights case under 42 U.S.C. § 1983 against everyone in sight, seeking improbable millions of dollars in damages ($7 million here). The defendants pick through the lengthy complaint, here in its sixth redaction with 79 paragraphs in 33 pages, hoping the plaintiff has pleaded himself out of court. They move to dismiss under Fed.R.Civ.P. 12(b)(6). The motion is granted, and the appeal follows.

A more focused complaint might have been taken more seriously by the district judge. Most of the charges just don't wash, as a brief summary of the complaint will show. (All the

facts in this opinion come from the complaint, which the defendants have not answered, so we do not vouch for their truth.) In 1988, a Chicago police sergeant named John Northen became an outspoken critic of the process by which the police department selected sergeants for promotion to lieutenant. The department retaliated against him with groundless reprimands, suspensions, and the like, in violation of his First Amendment rights. The retaliation induced in him a state of clinical depression, as a result of which he was placed on disability leave in November of 1991. He calls this placement a constructive discharge and another act of retaliation, and complains that he was not offered a termination hearing, but he does not claim that he was actually fit for duty either in November 1991 or at any time since, and we are told by the City without contradiction that in another lawsuit he has claimed to be disabled from performing police duties. While on disability leave he received half his salary, but we are told, again without contradiction, that his disability benefits expired in November 1996 (after he filed his complaint), forcing him to retire (with what benefits we do not know).

So far, Northen has no claim. He did not file this suit until November of 1993, and the statute of limitations for filing a section 1983 suit in Illinois is only two years. *Booker v. Ward*, 94 F.3d 1052, 1056 (7th Cir.1996). All the acts of retaliation so far mentioned that undergird his First Amendment claim are time-barred except his being placed on disability leave in November of 1991. But since he himself claims to have been disabled by then, we cannot see how placing him in that status could have been a further act of retaliation. Since by his own account he was incapable of performing the duties of a police officer, the only choice he faced was to be kicked off the force, and have nothing, or be given disability benefits until he retired (or was fit to return to duty), which was plainly a superior alternative. We do not see how it can be an act of retaliation to give someone what he very much wants. *DeGuiseppe v. Village of Bellwood*, 68 F.3d 187, 191 (7th

Cir.1995). Retaliation implies harm, however slight, *Bart v. Telford*, 677 F.2d 622 (7th Cir.1982), and benefits are not harms.

Yet Northen wanted disability benefits only because of his depression, and he claims—and in the posture of the case we must accept—that he was depressed and hence disabled only because of the earlier violations of his constitutional rights by the defendants (or by some of them). But as we had occasion to reaffirm just the other day, the consequences of an unlawful act do not extend the period within which to sue. *Dasgupta v. University of Wisconsin Board of Regents*, 121 F.3d 1138, 1139-40 (7th Cir.1997). As for the failure to grant Northen a termination hearing, we cannot imagine what purpose such a hearing would have served. Given his depression—and that *is* a given, for the reason just noted—he *wanted* to be placed on disability leave, and it would have been a disaster for him if as a result of the hearing he had either been fired or ordered back to work—work that by his own account he was medically unfit to perform.

But there is more to the Complaint. Northen alleges that in 1993 he went to a store in DuPage County to buy a gun. He told the salesman that he was a Chicago police sergeant on disability. The salesman replied that Northen would have to produce an official Chicago Police Department identification card. Northen requested the card from the department, but his request was denied. He returned to the store and told the salesman this and the salesman told him to come back the next day to pick up the gun. When he showed up the next day, five of the defendants (all Chicago police officers) were waiting for him. He was arrested, booked at a DuPage County jail, and charged with impersonating a public officer. 720 ILCS 5 32-5. A search of his person at the time of the arrest turned up a gold police badge that his mother had given him; we do not know what the badge said, although the complaint describes it as a "RETIRED" badge. The charges were soon dropped. Northen claims that the arrest violated the Fourth Amendment because it was not based on probable cause.

The defendants argue that the complaint—the only source of facts in this case—shows that they had probable cause to believe that Northen had violated the impersonation statute. The argument is nonsense. So far as appears, Northen did not display the "RETIRED" badge to the salesman (and remember that we don't know what the badge says) but merely told him, truthfully, that he was a Chicago police sergeant on disability leave. We do not know why he told him that. Maybe he thought he would get a discount; or maybe he thought he would get the gun quicker. Under Illinois law, police officers are entitled to buy a gun without a waiting period but the rest of us have to wait 72 hours. 720 ILCS 5 24-3(g). (No one, by the way, has remarked the oddity of selling a gun to a person who is clinically depressed, even though many such persons are suicidal. But we cannot find anything in Illinois law to prevent such a sale. See 430 ILCS 65/4(iv), (v); 720 ILCS 5 24-3(e), (f).) Whatever Northen thought or intended, we do not see how a person could be thought guilty of impersonation when he makes a complete and truthful representation of his name and position. Northen was exactly what he told the salesman: a Chicago police sergeant on disability leave.

At argument the defendants' lawyer told us that Northen was trying to obtain an advantage to which he was not entitled. We do not know how she knows that, since it isn't in the complaint and there is no other source of facts of record, but in any event we don't see what it has to do with impersonation. If Judge Doe tells a coffee vendor that he is Judge Doe and wants a free cup of coffee, he is seeking an advantage to which he is not entitled; but, provided he really is Judge Doe, he is not impersonating a public officer or anyone else. *State v. Doss*, 111 Ohio App.3d 63, 675 N.E.2d 854, 858 (1996); *People v. Jones*, 841 P.2d 372 (Colo.App.1992); cf. *People v. Rinehart*, 81 Ill.App.2d 125, 225 N.E.2d 486, 488-89 (1967).

We have only the complaint to go on. It may be that the defendants possessed facts not narrated in the complaint that gave them grounds for believing that Northen was impersonat-

ing a police officer on active duty. Maybe the salesman told them that Northen had done that. Then they would have had probable cause to arrest him. But there is nothing of that in the record.

The defendants argue that even if they lacked probable cause to arrest Northen, they are immune from a suit for damages growing out of the arrest because no court has interpreted the Illinois impersonation statute with reference to the issue of self-impersonation. In arguing this point they express grave concern about decisions of this court that appear, they argue, to "merge" the issue of immunity into the issue of probable cause.

Their concern is misplaced. The decisions in question express doubt that immunity *when conceived as probable cause to believe one has probable cause* is a useful, or even usable, concept. *Boyce v. Fernandes*, 77 F.3d 946, 948 (7th Cir.1996); *Maxwell v. City of Indianapolis*, 998 F.2d 431, 435-36 (7th Cir.1993); *Mahoney v. Kesery*, 976 F.2d 1054, 1057-58 (7th Cir.1992). Under the regime of *Harlow v. Fitzgerald*, 457 U.S. 800, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982), the office of public officers' immunity (not the absolute immunity of judges, prosecutors, and a few other officials but the qualified or good- faith immunity of other public officers, notably police) is to protect public officers against legal uncertainty. *Id.* at 818, 102 S.Ct. at 2738; *Boyce v. Fernandes*, *supra*, 77 F.3d at 948; *Jones v. City of Chicago*, 856 F.2d 985, 994 (7th Cir.1988). If the legal concept of probable cause has remained unchanged since the arrest and the only issue is whether the defendant had probable cause to arrest this plaintiff in these circumstances, it is difficult to see what purpose would be served by a defense of immunity when conceived as protection against changes or uncertainty in the law; and so the concepts of probable cause and official immunity could be thought in such a case to merge.

Against this conclusion it can be argued, with support from dicta in *Hunter v. Bryant*, 502 U.S. 224, 228-29, 112 S.Ct. 534, 537, 116 L.Ed.2d 589 (1991) (per curiam), and *Anderson v. Creighton*, 483 U.S. 635, 641, 107 S.Ct. 3034, 3039-40, 97

L.Ed.2d 523 (1987), and the Fifth Circuit's holding in *Presley v. City of Benbrook*, 4 F.3d 405, 409 (5th Cir.1993), that the police ought to have a buffer zone protecting them from liability in cases in which a reasonable police officer, unable to predict with exactitude how a magistrate or judge might evaluate the circumstances, could have thought he had probable cause, though the magistrate or judge disagreed. This conclusion is in tension with the holding in *Harlow* that the purpose of official immunity is to protect the official from changes in law (or clarification of previously unsettled law) occurring after he acted. The tension could be lessened by emphasizing the inherent vagueness of the concept of "probable cause," which makes it difficult for a police officer to know, in a close case, whether he has crossed the line.

How the merger issue will ultimately be resolved is unclear. One thing that is clear, however, is that there is no merger, even in a search or arrest case, when the meaning of a statute is in issue, or, stated otherwise, when the question is not whether the police had probable cause to believe that the plaintiff had engaged in conduct X but whether X is a crime under the statute that the police arrested the plaintiff for violating. If the answer to *that* question was unclear when the arrest was made, the police are entitled to their immunity, for it is a pure question of law.

No doubt there are uncertainties lurking in the impersonation statute, as there are in every statute. But the police cannot obtain immunity for liability for false arrests by arresting people on preposterous charges and then pointing to the absence of any judicial decision that declares the statutory interpretation underlying the charges to be preposterous. Their interpretation must be reasonable in light of existing law. *Scott v. Glumac*, 3 F.3d 163, 166 (7th Cir.1993); *Coleman v. Frantz*, 754 F.2d 719, 728-29 (7th Cir.1985); *Coffman v. Trickey*, 884 F.2d 1057, 1063 (8th Cir.1989). The fact that a statute has not been construed does not mean that there is no law, that anything goes. There is always the statute itself, and if its meaning is clear without benefit of judicial interpretation the officials enforcing

it cannot reasonably go against it. *Andreu v. Sapp*, 919 F.2d 637, 643 n. 6 (11th Cir.1990). The clearest violations may never generate an appeal, just because there is no nonfrivolous ground for an appeal; and without an appeal there will be no authoritative judicial interpretation of the statute. It would be a considerable paradox to say that public officers have a license to commit statutory violations so outlandish that they have never been the subject of a published appellate decision.

Suppose that the defendants had arrested Northen for the possession of property given to him by his mother, on the theory that since mothers are notoriously soft-hearted any "gift" from mother to son is actually a theft by the son, and so Northen was guilty of larceny. No reported case interpreting Illinois's larceny statute has ever addressed this imaginative theory. The defendants' theory that you can be guilty as it were of self-impersonation— that is, of representing yourself to be what you actually are—is likewise so imaginative as never to have occurred even to the legal mind and therefore never to have been addressed in a judicial opinion.

In short, when a proposed statutory interpretation is arguable, the plaintiff cannot rebut the defense of immunity without showing that the argument has been authoritatively resolved, but when the proposed interpretation is cockeyed, no such showing is required. *Andreu v. Sapp*, *supra*, 919 F.2d at 643; cf. *Scott v. Glumac*, *supra*, 3 F.3d at 167. The judgment for the defendants involved in the false-arrest claim must therefore be reversed. And it must be reversed not only with respect to that claim, but also with respect to the retaliation claim, since the false arrest is claimed to have been one of the acts of retaliation against Northen for exercising his First Amendment rights—and it is an act that occurred within the limitations period. The dismissal of the state-law claims supplemental to the claims that should not have been dismissed must likewise be reversed, and the case must be remanded for further proceedings. In all other respects the judgment is affirmed; and, since this is a split decision, no costs will be awarded in this court.

APPENDIX - B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOHN W. NORTHEN, Plaintiff,	)	
v.	)	Case No. 93 C 7013
CITY OF CHICAGO, et al, Defendants.	)	Hon. James F. Holderman, U.S. District Judge

ORDER

Defendants have moved to dismiss plaintiff's sixth amended complaint, contending that it does not correct the deficiencies that led this court to dismiss plaintiff's fifth amended complaint in the order of February 14, 1996. As stated in that order, allegations based on conduct occurring before November 17, 1991, are time-barred.

Count I again fails to state a claim because the defendants are entitled to qualified immunity. Whether a government official is protected by qualified immunity turns on the objective legal reasonableness of the action. *Vickery v. Jones*, 100 F.3d 1334, 1339 (7th Cir. 1996). It was objectively reasonable for defendants to place plaintiff on disability leave on November 18, 1991, when plaintiff had just sent defendants an affidavit stating that he had been clinically diagnosed as suffering from depression. Plaintiff's allegations as to previous conduct by defendants that caused his depression are time-barred.

Defendants are also entitled to qualified immunity on count II and its allegation that defendants conspired to deny

plaintiff a post-discharge hearing. The case of *Lucotti v. Mesnick*, 1991 WL 255471 (N.D.Ill.), held that police officers were not entitled to a hearing following their placement on disability leave. *Lucotti* was decided on November 19, 1991, the day after plaintiff's placement on disability leave, and it was objectively reasonable for defendants to follow *Lucotti* and deny plaintiff a hearing.

As to counts II and IV, plaintiff has made no amendments from his fifth amended complaint that would preclude dismissal for the reasons set forth in this court's previous order.

Because the court has dismissed plaintiff's federal claims in counts I-IV, the court will also dismiss plaintiff's pendent state claims in counts V-VII for lack of federal subject matter jurisdiction. As plaintiff has failed to perfect his claims after numerous opportunities and guidance from this court, dismissal of the sixth amended complaint is granted with prejudice. This case is dismissed in its entirety.

JAMES F. HOLDERMAN

UNITED STATES DISTRICT JUDGE

APPENDIX - C

United States Constitution, amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

United States Constitution, amend. XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor to deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. §1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

APPENDIX - D

9171 COMMITTEE

AN AD HOC COMMITTEE REPRESENTING MORE THAN 600 WHITE, BLACK, HISPANIC AND ASIAN-AMERICAN SERGEANTS. OUR MISSION: A FAIR PROMOTIONAL PROCESS WITHIN THE CHICAGO POLICE DEPARTMENT.

July 31, 1989

Mr. Anton R. Valukas
U.S. Attorney
Northern District of Illinois

VIA CERTIFIED MAIL

Dirksen Federal Building 1500
219 S. Dearborn St.
Chicago, IL 60604

Dear Mr. Valukas:

On behalf of the 9171 Committee and our membership, the undersigned formally requests that your office initiate an investigation into the police promotional examination for the rank of lieutenant which was administered by the City of Chicago during 1987 ("ExamScam").

As you are no doubt aware, the oral board component of this examination was the focus of a three-part investigative report which was televised last week on the local NBC affiliate, WMAQ-TV. This series concluded a ten-month investigation by the Better Government Association in collaboration with Unit 5.

The BGA-NBC inquiry corroborates our charge that City officials conspired to rig four of eight items in the scoring key with trick responses which were subsequently leaked to favored candidates, assuring ultimate success. Conversely, the overwhelming majority of the 852 sergeants faced an insurmount-

able competitive disadvantage. In further aggravation, this unprecedented treachery was executed directly beneath the nose of a federal judge, using Title VII compliance as a subterfuge. Indeed, the City actually inflicted adverse impact upon our most deserving minority candidates, making a mockery of the very principle which they so ardently embraced. Nowhere is this more strikingly evident than in the Gates Paradox: William L. Gates, a black sergeant attained perfect scores in the first two components of the exam and "flunked" the oral.

Cold mathematical precision sets the odds at 13.8 trillion to one that the oral board component is a flagrant fraud. It has become obvious that only extraordinary investigative measures will penetrate the eerie silence of City officials in this matter. Meanwhile, the morale of the nation's second-largest police department is in shambles. We are painfully aware that we and all Chicagoans are the victims of the greatest police promotion scandal in U.S. history, bumping Atlanta (1977).

At a recent meeting, 9171 members unanimously agreed that only a most thorough investigation by your office would be acceptable under such singularly tragic and desperate circumstances. Kindly direct any inquiries and your response to the 9171 Committee c/o the Chief Investigator, Better Government Association.

Respectfully yours,

(Sgt.) John Northen - 9171 Committee

cc: Mr. Michael Lyons
Chief Investigator
Better Government Association
230 N. Michigan Ave. - 1710
Chicago, IL 60611

APPENDIX - D

9171 COMMITTEE

AN AD HOC COMMITTEE REPRESENTING MORE THAN 600 WHITE, BLACK, HISPANIC AND ASIAN-AMERICAN SERGEANTS. OUR MISSION: A FAIR PROMOTIONAL PROCESS WITHIN THE CHICAGO POLICE DEPARTMENT.

April 18, 1990

The Honorable Richard M. Daley
The Mayor of the City of Chicago
City Hall - Room 507
121 North LaSalle Street
Chicago, Illinois 60602

Dear Mayor Daley:

On behalf of the 9171 Committee and our membership, the undersigned respectfully requests that you initiate an investigation into the so-called oral board component of the 1987 Lieutenants' Exam (ExamScam) and *stay* any further promotions to that rank pending the outcome of the investigation.

The 9171 Committee charges that during the summer of 1987, City officials conspired to rig four of eight items in the scoring key with trick responses which were subsequently leaked to favored candidates, ensuring their success.

Examscam sparked a firestorm of outrage which united *over 93%* or 607 of the 652 victimized sergeants in an awesome statement of righteous indignation. We proudly note that our numbers include whites (92.7%), blacks (93.6%), Hispanics (96.0%) and Asian-Americans (100.0%), the women (94.1%) edging out the men (93.1%). Special mentions include all four retirees, our most prominent "flunky", Terry Gainer, and all but one of those on leave. We were deeply moved when two critically ill sergeants kicked in their $100 checks from hospital

beds: Bill Jones has since recovered while Richard Walton succumbed to terminal cancer six days later. Indeed, Examscam had struck a raw nerve.

If current indications are correct, no known violation of state or federal law has occurred. What remains is *an ethical issue* not unlike the infamous promotion scandal which erupted within the Atlanta Police Department in 1977. Add *the unprecedented treachery of a rigged scoring key* and the enormity of Examscam becomes apparent. Your administration has inherited what has all the earmarks of *the worst police promotion scandal in U.S. history*!

The paper trail is as damning as it is irretrievable. Comprehensive statistical analyses of raw data have produced *four specific exhibits of documented evidence which support our charge*. Graphs, computer print-outs and other pertinent data have been enclosed for your scrutiny. A synopsis of the four exhibits follows:

(A) CHICANERY CONFIRMED. An analysis of the 18,744 ratings of item responses includes incontrovertible documentation that Items #2, #5, #6 and #7 "stumped" our membership base at a rate of 85% while those promoted to lieutenant had a difficulty rate of only 10%. Since all candidates were provided with the oral board questions months beforehand, a response pattern similar to that of Items #4 and #8 (97.4% correct) was to be expected for *all* items until the sleaze factor took control.

(B) HIDDEN AGENDA. The City maintained that an oral board weighted at an incredible 80% was necessary to reflect the candidate pool (72% white, 24% black and 4% Hispanic) through the top 200. The City came within +1 of their professed goal. Using identical scores, a *34%* oral *precisely* reflects the candidate pool. However, 40% of the 116 promoted lieutenants would still be sergeants due to their mediocre showing in the short answer essay component.

The last two exhibits are based on direct and valid comparisons between the official City list and a standard known as the X-list. The X-list is a statistically sound rank-order list which fairly measures the relative excellence of all candidates in the two objective components of the exam. Conventional methods were used to resolve ties and adjust for race.

(C) THE GATES PARADOX. Minority membership levels and a direct comparison between the City list and the X-list contradict the City's professed commitment to the principles of affirmative action and compliance with Title VII. The fact is that both the success and failure rates for the most deserving minorities were 20% worse than that of their white counterparts. Nowhere is this hypocrisy more strikingly evident that in the case of William L. Gates, a black sergeant. After months of diligent study, Sgt. Gates achieved *perfect scores in the two objective components* of the exam. However, in a ten-minute oral board, *he "bombed"* on all *four trick items* and became one of 452 "*failures*".

(D) THE ADMINISTRATIVE CLUSTER. An analysis of a clearly-defined statistical aggregate of all administrative sergeants actually serving in "administration" units on April 16, 1987 provides overwhelming proof of fraud. Among these 36 sergeants, random chance would place 10 to 11 in the top 250. A bright group, the X-list places 20 in the top 250. The City claims an incredible *thirty-four (34 of 36)* successes. Even with their demonstrated skills considered, cold mathematical precision sets the likelihood of such success at *less than one chance in 13.8 trillion*! Based on $4 ticket purchases, you would have a better shot at winning the Lotto jackpot *twice*!

All raw data and statistical exhibits have been reviewed by one of the nation's foremost experts in demographics, Dr. Pierre deVisé, an acknowledge statistical expert. In addition, experts in psychometrics provided assistance. Describing the oral board as "inherently absurd", Dr. deVisé stated "It goes beyond mere incompetence. It indicates deliberation and plan-

ning. There is no logical explanation for this other that *rigging. It had to be rigged.*" (Emphasis added)

Very respectfully yours,

(Sgt.) Ernest Evans
Chairman, 9171 Committee

Encl.